

EXHIBIT “F”

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3 _____
4 WAYNE BERRY,)
5 Plaintiff,) CIVIL NO. 01-00446SPK-LEK
6 vs.)
7 FLEMING COMPANIES, INC.,)
8 aka FLEMING FOODS, INC.,)
9 aka FLEMING, DOE)
10 INDIVIDUALS 1-50 and)
11 DOE PARTNERSHIPS,)
12 CORPORATIONS and OTHER)
13 ENTITIES 1-20,)
14 Defendants.)
15 _____)

13 TRANSCRIPT OF PROCEEDINGS

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15 The above-entitled matter came on for Jury
16 Trial commencing at 9:05 a.m. on Tuesday, February 25,
17 2003, Honolulu, Hawaii,
18

19 BEFORE: HONORABLE SAMUEL P. KING
20 United States District Judge
21 District of Hawaii
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23

24 REPORTED BY: LISA J. GROULX, COURT REPORTER
25 Notary Public, State of Hawaii

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A P P E A R A N C E S

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6 FOR PLAINTIFF: TIMOTHY J. HOGAN, ESQ.

7 WESLEY W. ICHIDA, ESQ.

8 LYNCH ICHIDA THOMPSON KIM & HIROTA

9 1132 Bishop Street, Suite 1405

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14 FOR DEFENDANTS: LEX R. SMITH, ESQ.

15 ANN TERANISHI, ESQ.

16 Kobayashi, Sugita & Goda

17 First Hawaiian Center

18 999 Bishop Street, Suite 2600

19 Honolulu, Hawaii 96813

20 (808) 539-8700

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24 ALSO PRESENT: Ralph Stussi

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LISA GROULX & ASSOCIATES
(808) 225-5701

1 I N D E X

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4 PLAINTIFF'S WITNESSES: PAGES

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6 ROGER WALL

7 Direct examination by Mr. Hogan

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9 WAYNE BERRY

10 Direct examination (resumed) by Mr. Hogan

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14 EXHIBITS: MARKED RECEIVED

15

Plaintiff's Exhibit 83 28

16 Plaintiff's Exhibit 85 34

Plaintiff's Exhibit 86 37

17 Plaintiff's Exhibit 87 39

Plaintiff's Exhibit 90 - 96 67

18 Plaintiff's Exhibit 58 81

Plaintiff's Exhibit 47 87

19 Plaintiff's Exhibit 59 96

Plaintiff's Exhibit 60 115

20 Plaintiff's Exhibit 61 126

Plaintiff's Exhibit 62 132

21 Plaintiff's Exhibit 52 134

Plaintiff's Exhibit 16 140

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Defendant's Exhibit 280 129

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1 they weren't damaged or the dates weren't bad, because
2 most of it was food items, and move it across and put
3 it in ocean containers and then truck those ocean
4 containers down to Sealand or Matson's container yard
5 to be loaded on ships.

6 My software basically set it up so that our
7 terminals on the mainland were able to come through
8 the Internet and access my system to produce receiving
9 reports, they produced tags to put on the pallets so
10 the products could be identified, and then we also
11 immediately identified shortages which were input to
12 my system so that, like in this case, Fleming's buyers
13 could be notified right away. If it was a pallet full
14 of frozen fish and they ordered 100 cases and only 90
15 showed up, that gave all of our customers, including
16 Fleming, lead time to say, okay, I need to start
17 another order coming in.

18 Q. Now at the time that this function was being
19 done -- and did you use the term "pre receiving"?

20 A. Yes.

21 Q. When the pre serving was done, was it API
22 employees that would do that?

23 A. Yes.

24 Q. At any time did you allow anyone other than
25 API employees to use the system to do pre receiving?

1 A. Never.

2 Q. At any time have you ever authorized anyone,
3 other than Fleming employees, to do pre receiving
4 currently on the mainland?

5 A. No. Never.

6 Q. What is your understanding of who is doing
7 pre receiving now on the mainland?

8 A. It's my understanding that Fleming has
9 allowed Hawaiian Express to use my system to do pre
10 receiving on the mainland.

11 Q. Did you ever authorize Fleming to allow
12 another company to use your system?

13 A. No. I specifically restricted that and I was
14 promised by Fleming that they would not do that.

15 Q. In your experience as a computer programmer,
16 computer consultant, would a company like Hawaiian
17 Express be a potential customer for you?

18 A. A potential customer, yes.

19 Q. Has Hawaiian Express ever expressed a need to
20 license your software to you?

21 A. No.

22 Q. Do you have any understanding of why that is?

23 MR. SMITH: Objection, Your Honor. It
24 calls --

25 THE COURT: I'll sustain that objection.